

CORRESPONDENCE SUMMARY

DATE: May 24, 2011

CORRESPONDENCE NUMBER: ZCOR-2011-0092

SUBJECT: Proffer Determination regarding the location of a child care center on the PD-CC (NC) portion of Morley Corner

1993 Ordinance Reference Numbers: 4-200
4-300

1972 Ordinance Reference Numbers:

Other Applicable Reference Numbers: ZMAP 2009-0006*
SPEX 2009-0026*

Applicable Tax Map/PIN Numbers: /79//62/////3/ 088-47-3765

Correspondence Summary: ZMAP 2009-0006, Proffer III is applicable solely to the PD-OP portion of the subject property; a "child care center" is a separate and distinct use from "school" as defined in Article 8 of the Revised 1993 Zoning Ordinance; and, a "child care center" pursuant to Proffer II.B, Section 4-203, and Section 5-609 of the Revised 1993 Zoning Ordinance may be constructed on the subject property upon approval of a site plan and issuance of permits.

PROPERTY OWNER: Temple Baptist Church of Herndon VA
1545 Dranesville Road
Herndon, VA 20170-2504

Author: Brad Polk

*Indicates where to file

Is this a determination? Check one: Yes ☒ No ☐



Loudoun County, Virginia

www.loudoun.gov

Department of Building and Development

Zoning Administration / MSC# 60

1 Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000

Administration: 703-777-0220 • Fax: 703-771-5215

May 24, 2011

Andrew A. Painter, Esq.
Walsh Colucci Lubeley Emrich & Walsh PC
1 E. Market St., Third Floor
Leesburg, VA 20176-3014

Re: Proffer Determination – Morley Corner PD-CC (NC) Parcel; PIN #088-47-3765

Dear Mr. Painter:

This correspondence is in response to your letter dated May 3, 2011, to Daniel J. Schardein, Zoning Administrator, in which you requested a proffer determination regarding the location of a child care center on the PD-CC (NC) portion of the Morley Corner property. The property in question is identified by PIN #088-47-3765, and is subject to the approved Proffer Statement for Morley Corner – Temple Baptist Church & School, ZMAP 2009-0006. I have researched your request and convey the following information.

The Zoning Map Amendment for Morley Corner – Temple Baptist Church & School, ZMAP 2009-0006, was approved by the Board of Supervisors, along with special exception application SPEX 2009-0026 on September 13, 2010, subject to the Proffer Statement dated August 19, 2010, and the Conditions of Approval dated June 23, 2010. This application remapped a portion of the Morley Corner property previously approved with ZMAP 2006-0003 to 19.19 acres PD-OP and 1.74 acres PD-CC (NC) as shown on sheet 3 of the Concept Development Plan (attached). The special exception application applies only to the PD-OP portion of the Morley Corner Zoning Map Amendment for the special exception uses of a church and school.

Your letter specifically requests confirmation of the following:

- 1. Proffer III of the Proffer Statement approved pursuant to ZMAP 2009-0006 is applicable solely to the PD-OP portion of the Property.*

In the preamble of the Proffer Statement for Morley Corner – Temple Baptist Church & School, ZMAP 2009-0006, it clearly states the approval of the zoning map amendment is *“to permit the construction of a church, child care center and accessory recreational fields in the PD-OP portion of the property...”* The proffer statement is not ambiguous as to one of the purposes of the zoning map amendment is to permit the construction of a church and child care center on the PD-OP, Planned Development – Office Park, portion of the property.

Proffer III of ZMAP 2009-0006 addresses the child care center and school requirements for attendance and operations as shown in the proffer text below.

The child care center use shall operate only during the hours before and after school, beginning no earlier than 6:00 a.m. and closing no later than 7:00 p.m., Monday through Friday. The only children who may attend the child care center shall be children enrolled as students in the private school operated on the Property. The only children who may be students of any school operated on the Property shall be attendees of Temple Baptist Church.

As the proffer addresses the child care center and the school collectively with the church it is clear the requirements set forth in Proffer III are directed toward the child care center, church, and school to be constructed on the PD-OP portion of the property. Thus, I concur that Proffer III of the Proffer Statement approved pursuant to ZMAP 2009-0006 is applicable solely to the PD-OP portion of the Property.

2. *"Child Care Center," as defined in the PD-OP and PD-CC (NC) district regulations as well as in Article 8 of the Zoning Ordinance is a separate and distinct use from "School" as defined in same.*

Article 8 of the Revised 1993 Zoning Ordinance defines "child care center" as "a licensed establishment which offers care, protection and supervision for compensation to more than nine (9) children at a time during any twenty-four (24) hour period, and then for only part of any twenty-four (24) hour day. A child care center may include nursery schools, kindergartens or other facilities for which the purpose is primarily educational, recreational, or medical treatments." "Child Care Center" is listed in Section 4-203(A) of the Revised 1993 Zoning Ordinance as a permitted use in the Planned Development – Commercial Center – Neighborhood Center (PD-CC-NC) District pursuant to the requirements in Section 5-609. "Child care center" is also listed as a permitted use in Section 4-303 in the Planned Development – Office Park (PD-OP) District pursuant to the requirements in Section 5-609.

"School" is not a permitted use in the PD-OP district; however, Section 4-304 of the Revised 1993 Zoning Ordinance does permit a "School, private, accessory to a church" by approval of a special exception. Article 8 defines "private school" as "any building, or group of buildings, which meets State requirements for primary, secondary, or higher education and which does not secure the major part of its funding from any government agency." The special exception application, SPEX 2009-0026, that was approved concurrently with ZMAP 2009-0006, granted approval for the church to construct and operate a private school.

"School" is also not a permitted use in the PD-CC (NC) district or by special exception in the PD-CC (NC) district. "School" is not defined in Article 8; however, "school (elementary, middle, and high)" is defined as "an establishment which provides any kindergarten, primary, and/or secondary educational course but not including an establishment primarily for the instruction of adults, a day care establishment, a child care center, a child care home, or an in-home school for

the purposes of instructing children of the family residing in the household. Parking of school buses on-site shall be considered an accessory use to a school."

Clearly, by definition a "child care center" and "school" are separate and distinct uses. Further, in the PD-CC (NC) district, "child care center" is a permitted use, and "school" is not.

3. *A "Child Care Center," pursuant to Proffer II.B of the Proffer Statement and Section 4-203 of the Revised 1993 Loudoun County Zoning Ordinance ("Zoning Ordinance") may be constructed on the Subject Property upon approval of a site plan and issuance of permits.*

Proffer II.B of ZMAP 2009-0006 provides for commercial uses within the PD-CC (NC) district:

"The development of commercial uses on the portion of the Property zoned PD-CC (NC) shall include up to a maximum of 22,500 square feet of commercial uses. Such commercial uses may be any uses permitted in the PD-CC (NC) zoning district regulations of the Zoning Ordinance and may include any uses permitted by special exception in the PD-CC (NC) zoning district regulations provided that approval of the requisite special exception is obtained in accordance with the Zoning Ordinance."

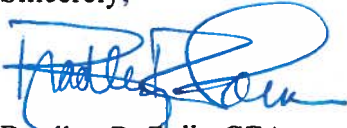
"Child Care Center" is listed in Section 4-203(A) of the Revised 1993 Zoning Ordinance as a permitted use in the Planned Development – Commercial Center – Neighborhood Center (PD-CC-NC) District pursuant to the requirements in Section 5-609. Therefore, a child care center can be constructed on the Subject Property upon approval of a site plan and issuance of permits in accordance with the approved Proffer Statement and the provisions of the Revised 1993 Zoning Ordinance.

PLEASE NOTE: This opinion is valid only as of this date, and this opinion does not and shall not relieve the owner or any occupant of the property in question from the obligation to comply with all applicable Zoning Ordinance and other County Ordinance requirements. This opinion is based upon the proffers and the text of the Zoning Ordinance as they exist today, May 24, 2011, and such proffers may be amended by a subsequent Zoning Concept Plan Amendment. This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator or any other official with respect to any other property. No person may rely on this determination with respect to any property other than the referenced property.

Please be advised that any person aggrieved, or any officer, department or agency of Loudoun County affected by an order, requirement, decision or determination made by an administrative officer in the administration and enforcement of the provisions of the *Zoning Ordinance* may appeal said decision within thirty days to the Board of Supervisors in strict accordance with Section 15.2-2301 of the *Code of Virginia*. This decision is final and unappealable if not appealed within 30 days. An application package for an appeal to the Board of Supervisors may be obtained by visiting the Loudoun County Government Center, 1 Harrison St., S.E., Second Floor, Customer Service, Leesburg, VA. Two copies of the completed application must be submitted to the Department of Building and Development Customer Service counter with the fee payment of \$350.00 within 30 days from the date of this letter.

If you have any questions regarding this correspondence, please contact me via email (Bradley.Polk@loudoun.gov) or you may call me at (703) 777-0411.

Sincerely,



Bradley R. Polk, CZA
Proffer Auditor

Attachment: Sheet 3 of the approved Concept Development Plan for Morley Corner,
ZMAP 2009-0006

cc: Scott K. York, Chairman, Board of Supervisors
Robin W. Bartok, Staff Aide to Chairman York
Stevens Miller, Dulles District Supervisor
Dan Schardein, Zoning Administrator
Marilee Seigfried, Deputy Zoning Administrator
Susan Glass, Proffer Manager
Teresa Miller, Zoning Planner

cc via US Mail: Temple Baptist Church, Property Owner